FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/154934

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied a prior authorization request for personal care worker hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sharon Beck, RN, BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization (PA) request seeking Medicaid payment for 28.00 hours (or 112 units with each unit = 15 minutes) per week of personal care services, 96 units or 24 hours of personal care services

per year to be used as needed and 28 units or 7 hours per week of transportation was filed on behalf of Petitioner on or about November 4, 2013. The total cost was noted to be $36,640.50. The requesting provider is Independence First. The request was for 53 weeks.

3. Petitioner is 59 years of age ([redacted]). She lives alone in the community. The diagnoses noted on the first page of the PA request are other chronic pain and muscle weakness.

4. Two earlier prior authorizations request were approved for Petitioner. One was approved for 22 hours per week for the period from March 4, 2013 through July 1, 2013. The other was approved for 9.25 hours per week for the period from July 2, 2013 through December 31, 2013.

5. The Department denied this request completely for lack of demonstration of medical necessity.

DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §* DHS *107.02(3) (e)*:

> (e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
> 1. The medical necessity of the service;
> 2. The appropriateness of the service;
> 3. The cost of the service;
> 4. The frequency of furnishing the service;
> 5. The quality and timeliness of the service;
> 6. The extent to which less expensive alternative services are available;
> 7. The effective and appropriate use of available services;
> 8. The misutilization practices of providers and recipients;
> 9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or
> private insurance guidelines;
> 10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
> 11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
> 12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

> (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
> (b) Meets the following standards:
> 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
> 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
> 3. Is appropriate with regard to generally accepted standards of medical practice;
> 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
> 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
> 6. Is not duplicative with respect to other services being provided to the recipient;
> 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.
Wis. Admin. Code, §DHS 101.03(96m).

Also, the following Administrative Code provision is relevant here:

DHS 107.112 Personal care services. (1) COVERED SERVICES. (a) Personal care services are medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(b) Covered personal care services are:
1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.
Wis. Admin. Code, §DHS 107.112(1)(a) and (b).

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence". This legal standard of review means, simply, that "it is more likely than not" that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a 9 page letter (Ex # 3) that detailed its rationale for denying the requested personal care services. In brief, as I understand it, the Department denied the request as the physician orders expired on December 31, 2013, physical therapy notes indicate improvement in Petitioner's pain levels with that therapy but that Petitioner declined to continue physical therapy in mid-2013, and that the documentation of Petitioner's functional limitations that prevent her from performing her activities of daily living is from early in 2013. That Petitioner experiences pain is not questioned but the Department notes that adaptive equipment could be utilized to help Petitioner with ADLs that she has some trouble with, e.g., a long handled scrub brush, a hand held shower and grab bars could provide assistance with Petitioner's bathing needs.

Petitioner, on the other hand, notes that her pain is such that she needs help with bathing, dressing, grooming and some early AM transfers. She also indicated that she needs at least some adaptive medical equipment – most notably an elevated toilet seat.

There is a dichotomy between the points noted by the Department in Exhibit # 3, the Petitioner's indication of her needs and the Personal Care Screening Tool (PCST). Nonetheless, I am sustaining the Department denial. It is not disputed that Petitioner has pain but the evidence is not sufficient demonstrate that it is more PCW hours rather than more physical therapy coupled with some adaptive equipment would not serve to make Petitioner independent as to her activities of daily living.

NOTE: The provider will not receive a copy of this Decision. It is suggested that Petitioner share it with the provider.

CONCLUSIONS OF LAW

That the evidence offered on behalf of Petitioner is not sufficient to demonstrate that this prior authorization request for personal care services meets standards necessary for payment by Medicaid.

THEREFORE, it is **ORDERED**

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of April, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 9, 2014.

Division of Health Care Access and Accountability